

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION
1333 H Street NW
Washington, DC 20005,

Plaintiff,

v.

BUREAU OF SAFETY AND
ENVIRONMENTAL ENFORCEMENT
1849 C Street NW
Washington, DC 20240,

Defendant.

Civil Action No. _____

COMPLAINT

1. Plaintiff Democracy Forward Foundation brings this action against Defendant the Bureau of Safety and Environmental Enforcement (“BSEE”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Defendant has failed to sufficiently respond to Plaintiff’s FOIA request for records that relate to the agency’s application of procedures by which it grants waivers to offshore drilling safety requirements. Plaintiff therefore respectfully requests that the Court compel Defendant to comply with the FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

PARTIES

4. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia, and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part by educating the public on government actions and policies.

5. Defendant BSEE is a federal agency within the meaning of the FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. BSEE has possession, custody, and control of records to which Plaintiff seeks access.

FACTUAL ALLEGATIONS

6. On July 23, 2019, Plaintiff sent two FOIA requests—one to BSEE’s Headquarters, the other to its Gulf of Mexico regional office—concerning the application of its waiver procedures. Plaintiff requested the following records from both offices:

All documents or correspondence to or from any BSEE employee or officer including advice, guidance, direction, or opinions regarding DOI or BSEE application of the procedures described at 30 C.F.R. §§ 250.141, 240.142, 250.701, 250.702 to the requirements set forth in 30 CFR Chapter II, Subchapter B, Part 250, Subpart G.

Ex. A. at 1; Ex. B. at 1. Plaintiff requested that the agency not limit its search to documents that include citations to the above authority, but instead identify both responsive documents with those citations *and* documents that apply the procedures and substance of the relevant authority without citing to the Code of Federal Regulations. Plaintiff specified that the date range for this request is April 1, 2016 until the search for responsive documents is complete.

7. In both requests, Plaintiff sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii), which requires a fee waiver if the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *See*

Ex. A. at 2-3; Ex. B at 2-3.

8. By letter dated August 15, 2019, BSEE's Gulf of Mexico regional office acknowledged having received Plaintiff's FOIA request, and having assigned it number 2019-00218. Ex. C. The August 15, 2019 letter notified Plaintiff that BSEE had taken a ten-workday extension "[d]ue to the need to gather the information from other offices[.]" *Id.* at 1.

9. BSEE has not, to date, acknowledged the receipt of the FOIA request sent to its Headquarters.

10. As of the date of this Complaint, BSEE has failed to inform Plaintiff whether it will comply with the FOIA requests, produce all requested records, or demonstrate that it is lawfully exempt from production. Nor has BSEE notified Plaintiff of the scope of any responsive records the agency intends to produce or withhold, and the reasons for any withholdings, or informed Plaintiff that it may appeal any adequately specific, adverse determination.

11. Because BSEE has "fail[ed] to comply with the applicable time limit provisions" of the FOIA, even with the benefit of any extensions of time that BSEE might have claimed, Plaintiff is "deemed to have exhausted [its] administrative remedies." 5 U.S.C. § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

Count One (Violation of the FOIA, 5 U.S.C. § 552)

12. Plaintiff repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

13. By failing to respond to the request sent by Plaintiff to BSEE's Headquarters within the statutorily prescribed time limit, Defendant has violated its duties under 5 U.S.C. § 552, including, but not limited to, its duties to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

14. Plaintiff is being irreparably harmed by Defendant's violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

Count Two (Violation of the FOIA, 5 U.S.C. § 552)

15. Plaintiff repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

16. By failing to respond to the request sent by Plaintiff to BSEE's Gulf of Mexico regional office within the statutorily prescribed time limit, Defendant has violated its duties under 5 U.S.C. § 552, including, but not limited to, its duties to conduct a reasonable search for responsive records, and to produce all responsive, reasonably segregable, non-exempt information.

17. Plaintiff is being irreparably harmed by Defendant's violation of the FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. order Defendant to conduct searches for any and all records responsive to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests;
2. order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin Defendant from continuing to withhold any and all non-exempt records

- responsive to Plaintiff's FOIA requests;
4. order Defendant to grant Plaintiff's request for a fee waiver;
 5. grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
 6. grant any other relief the Court deems appropriate.

Dated: October 22, 2019

Respectfully submitted,

/s/ Kristen P. Miller

Kristen P. Miller (D.C. Bar No. 229627)
Travis Annatoyn (D.C. Bar No. 1616605)
Javier Guzman (D.C. Bar No. 462679)
Democracy Forward Foundation
P.O. Box 34553
Washington, DC 20043
(202) 448-9090
kmiller@democracyforward.org
tannatoyn@democracyforward.org
jguzman@democracyforward.org

Attorneys for Plaintiff